THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.8223 of 2002

Dated 06-02-2006

Between:

K. Subba Rao.

..... PETITIONER

AND

The District Collector, Kurnool, and another.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.8223 of 2002

O R D E R:

This writ petition is filed seeking a declaration that the order dated 26-09-2001 in C.A.No.22 of 2000 on the file of the Court of the Principal Sessions Judge, Kurnool, partly confirming the confiscation order dated 18-01-2000 passed by the first respondent-District Collector, Kurnool, is arbitrary and illegal.

The petitioner is the proprietor of M/s Dhanalakshmi Rice Mill, Pasulapadu Village, Gospadu Mandal, Kurnool District. On 03-07-1998 the second respondent, the Inspector of Police, Vigilance Cell, Civil Supplies Department of Kurnool District, inspected the rice mill of the petitioner and having found certain irregularities seized the available stocks under Panchanama. In pursuance thereof, a show-cause notice was issued by the first respondent calling upon the petitioner to show-cause as to why the stocks seized should not be confiscated under Section 6-A of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act'). The two charges mentioned in the show-cause notice are as under:

> *"Charge No.1: That the petitioner stored huge quantities of rice, paddy and broken rice without possessing records and he was transporting the paddy and rice to other districts and Karnataka state unauthorisedly to gain pecuniary benefits out of it and he misused the farmers permits and thereby contravened clause 3 under the Andhra Pradesh Rice and Paddy (Storage Control) Order, 1981 and conditions 3,5,6,8,10 and 12 of licence issued under Andhra Pradesh*

Scheduled Commodities Dealers' (Licensing and Distribution) Order, 1982.

Charge No.2: That the petitioner was undertaking custom milling without prior permission of the Collector and thereby contravened clause 10 under the Andhra Pradesh Rice Procurement (Levy) Order, 1984 and clause 3 under the Andhra Pradesh Trading Rice Mills (Restriction on Custom Milling) Order, 1978."

The petitioner submitted his explanation denying the allegations made in the show-cause notice. The first respondent, having conducted due enquiry, by order dated 18-01-2000, held that both the charges were proved and accordingly ordered confiscation of 50% of the seized stocks. Aggrieved by the same, the petitioner preferred an appeal under Section 6-C of the Act before the Court of the Principal Sessions Judge, Kurnool. The learned Sessions Judge allowed the appeal in part thereby reducing the quantum of confiscation from 50% of the seized stocks to 20%, by judgment dated 26-09-2001. The said judgment is under challenge in this writ petition.

The contention of the petitioner is that both the first respondent as well as the learned Sessions Judge failed to appreciate the explanation offered by the petitioner properly and erroneously held that the charges were proved.

The learned counsel for the petitioner contends that even assuming that the charges are established, since charge No.2 relates to a technical mistake and so far as the first charge is concerned, since admittedly the District Collector failed to take into consideration the exemption, granted under Government Memo dated 27-11-1995, the learned Sessions Judge ought to have set aside the order of confiscation by allowing the appeal.

As can be noted from the charges extracted above, the allegations against the petitioner were that he stored huge quantities of rice, paddy and broken rice without maintaining any record and was transporting paddy and rice to other districts and Karnataka state

unauthorisedly and also undertaking custom milling without permission of the Collector. Though the petitioner pleaded that he was maintaining all the necessary records, the same could not be produced before the respondents stating that the records were kept in a different place for safe custody. As per conditions 3, 4, 11 and 12 of the licence issued under the Andhra Pradesh Scheduled Commodities Dealers' (Licensing and Distribution) Order, 1982, every licencee has to keep all the records in the business premises and make them readily available to the Inspecting Officials for check. Though the mill was functioning at the time of inspection, the petitioner failed to make the relevant records and registers available to the Inspecting Officials. The Inspection took place on 03-07-1998 whereas the xerox copies of the stock-book were filed by the petitioner only on 23-07-1998. The first respondent, on appreciation of the material placed on record, recorded a finding that the petitioner failed to make the relevant records/registers available to the Inspecting Officials/Licencing Authorities for the period from 03-07-1998 to 23-07-1998. He also failed to produce the original records of the xerox copies furnished by him. So far as the allegations in charge No.2 are concerned, the plea of the petitioner was that he was undertaking custom milling of the stocks brought by the cultivators for which no permission was required. According to Clause 3 of the Andhra Pradesh Trading Rice Mills (Restriction on Custom Milling) Order, 1978 and Clause 10 of the Andhra Pradesh Rice Procurement (Levy) Order 1984, the owner of a trading rice mill should not undertake custom milling of paddy without prior permission of the Collector. Hence, the plea of the petitioner that no permission is required in respect of the stocks brought by the cultivators was not well founded.

As a matter of fact in spite of the fact that both the charges framed against the petitioner were held proved, the learned Sessions Judge, while observing that the charges were not serious in nature attracting heavy penalty, thought it fit to reduce the confiscation from 50% of the seized stocks to 20%. The said judgment is in

accordance with the settled principles of law and does not suffer from any error of fact or law. In the circumstances, I do not find any justifiable reason to interfere with the said order and the writ petition is devoid of any merit.

The writ petition is accordingly dismissed. No costs.

(G. ROHINI, J)

Date:06 -02-2006

ghn